

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

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4 In the Matter of:

5 SECURITIES INVESTOR PROTECTION
6 CORPORATION,

7 Plaintiff,

8 v. Case No. 08-01789(SMB)

9 BERNARD L. MADOFF INVESTMENT
10 SECURITIES, LLC,

11 Defendant.

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13 IRVING H. PICARD, TRUSTEE FOR
14 LIQUIDATION OF BERNARD L. MADOFF
15 INVESTMENT SECURITIES LLC,

16 Plaintiff,

17 v. Case No. 12-01920(SMB)

18 KINGATE GLOBAL FUND, LTD.,
19 by its Liquidators,

20 Defendant.

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U.S. Bankruptcy Court
One Bowling Green
New York, New York

April 17, 2014
11:09 AM

B E F O R E :
HON STUART M. BERNSTEIN
U.S. BANKRUPTCY JUDGE

1 Hearing re: Application for Interim Professional
2 Compensation / Thirteenth Application of Windels Marx Lane &
3 Mittendorf, LLP for Allowance of Interim Compensation for
4 Services Rendered and Reimbursement of Actual and Necessary
5 Expenses Incurred from August 1, 2013 through November 30,
6 2013 for Windels Marx Lane & Mittendorf, LLP, Special
7 Counsel, period: 8/1/2013 to 11/30/2013, fees:
8 \$1,933,182.50, expenses: \$10,001.84.

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10 Hearing re: Motion for Leave to File an Amended Complaint

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12 Hearing re: Motion for 14th Interim Fee Application

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14 Hearing re: Motion for 4th Interim Distribution

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16 Hearing re: Application for Interim Professional
17 Compensation / Fourteenth Application of Trustee and Baker &
18 Hostetler LLP for Allowance of Interim Compensation for
19 Services Rendered and Reimbursement of Actual and Necessary
20 Expenses Incurred from August 1, 2013 through November 30,
21 2013 for Baker & Hostetler, L.L.P., Trustee's Attorney,
22 period: 8/1/2013 to 11/30/2013, fee: \$39237170.40, expenses:
23 \$489,830.09.

24
25 Hearing re: Application for Interim Professional

1 Compensation / Application of Schiltz & Schiltz as Special
2 Counsel to the Trustee for Allowance of Interim Compensation
3 for Services Rendered and Reimbursement of Actual and
4 Necessary Expenses Incurred from August 1, 2013 through
5 November 30, 2013 for Schiltz & Schiltz, Special Counsel,
6 period: 8/1/2013 to 11/30/2013, fee: \$31,100.40, expenses:
7 \$2,021.51.

8
9 Hearing re: Application for Interim Professional
10 Compensation / Application of Higgs & Johnson (formerly
11 Higgs Johnson Truman Bodden & co. as Special Counsel to the
12 Trustee for Allowance of Interim Compensation for Services
13 Rendered and Reimbursement of Actual and Necessary Expenses
14 Incurred from August 1, 2013 through November 30, 2013 for
15 Higgs & Johnson, Special Counsel, period: 8/1/2013 to
16 11/30/2013, fee: \$58,369.50, expenses: \$4,772.21.

17
18 Hearing re: Application for Interim Professional
19 Compensation / Application of Soroker - Agmon as Special
20 Counsel to the Trustee for Allowance of Interim Compensation
21 for Services Rendered and Reimbursement of Actual and
22 Necessary Expenses Incurred from August 1, 2013 through
23 November 30, 2013 for Soroker - Agmon, Special Counsel,
24 period: 8/1/2013 to 11/30/2013, fee: \$46,747.43, expenses:
25 \$14.00.

1 Hearing re: Application for Interim Professional
2 Compensation / Application of Graf & Pitkowitz Rechtsanwälte
3 GmbH as Special Counsel to the Trustee for Allowance of
4 Interim Compensation for Services Rendered and Reimbursement
5 of Actual and Necessary Expenses Incurred from August 1,
6 2013 through November 30, 2013 for Graf & Pitkowitz
7 Rechtsanwälte GmbH, Special Counsel, period: 8/1/2013 to
8 11/30/2013, fee: \$369,883.06, expenses: \$4,169.66.

9
10 Hearing re: Application for Interim Professional
11 Compensation / Application of SCA Creque as Special Counsel
12 to the Trustee for Allowance of Interim Compensation for
13 Services Rendered and Reimbursement of Actual and Necessary
14 Expenses Incurred from August 1, 2013 through November 30,
15 2013 for SCA Creque, Special Counsel, period: 8/1/2013 to
16 11/30/2013, fee: \$18,342.97, expenses: \$135.00.

17
18 Hearing re: Application for Interim Professional
19 Compensation / Application of Young Conaway Stargatt &
20 Taylor, LLP as Special Counsel to the Trustee for Allowance
21 of Interim Compensation for Services Rendered and
22 Reimbursement of Actual and Necessary Expenses Incurred from
23 August 1, 2013 through November 30, 2013 for Young, Conaway,
24 Stargatt & Taylor, LLP, Special Counsel, period: 8/1/2013 to
25 11/30/2013, fee: \$31,022.55, expenses: \$742.93.

1 Hearing re: Application for Interim Professional
2 Compensation / Application of Williams, Barristers &
3 Attorneys as Special Counsel to the Trustee for Allowance of
4 Interim Compensation for Services Rendered and Reimbursement
5 of Actual and Necessary Expenses Incurred from August 1,
6 2013 through November 30, 2013 for Williams, Barristers &
7 Attorneys, Special Counsel, period: 8/1/2013 to 11/30/2013,
8 fee: \$118,386.81, expenses: \$9.

9
10 Hearing re: Application for Interim Professional
11 Compensation / Application of Taylor Wessing as Special
12 Counsel to the Trustee for Allowance of Interim Compensation
13 for Services Rendered and Reimbursement of Actual and
14 Necessary Expenses Incurred from August 1, 2013 through
15 November 30, 2013 for Taylor Wessing, Special Counsel,
16 period: 8/1/2013 to 11/30/2013, fee: \$1,406,764.55,
17 expenses: \$60,747.30.

18
19 Hearing re: Application for Interim Professional
20 Compensation / Application of UGC & Associates as Special
21 Counsel to the Trustee for Allowance of Interim Compensation
22 for Services Rendered and Reimbursement of Actual and
23 Necessary Expenses Incurred from August 1, 2013 through
24 November 30, 2013 for UGC & Associates, Special Counsel,
25 period: 8/1/2013 to 11/30/2013, fee: \$93,987.94, expenses:

1 \$10,508.64.

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3 Hearing re: Application for Interim Professional
4 Compensation / Application of Triay Stagnetto Neish as
5 Special Counsel to the Trustee for Allowance of Interim
6 Compensation for Services Rendered and Reimbursement of
7 Actual and Necessary Expenses Incurred from October 1, 2013
8 through November 30, 2013 for Triay Stagnetto Neish, Special
9 Counsel, period: 10/1/2013 to 11/30/2013, fee: \$87,185.27,
10 expenses: \$939.51.

11

12 Hearing re: Application for Interim Professional
13 Compensation / Application of Werder Vigano as Special
14 Counsel to the Trustee for Allowance of Interim Compensation
15 for Services Rendered and Reimbursement of Actual and
16 Necessary Expenses Incurred from August 1, 2013 through
17 November 30, 2013 for Werder Vigano, Special Counsel,
18 period: 8/1/2013 to 11/30/2013, fee: \$3,412.67, expenses:
19 \$0.

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21 Hearing re: Application for Interim Professional
22 Compensation / Application of Greenfield Stein & Senior, LLP
23 as Special Counsel to the Trustee for Allowance of Interim
24 Compensation for Services Rendered and Reimbursement of
25 Actual and Necessary Expenses Incurred from August 1, 2013

1 through November 30, 2013 for Greenfield Stein & Senior,
2 LLP, Special Counsel, period: 8/1/2013 to 11/30/2013, fee:
3 \$2,817.45, expenses: \$36.25.

4
5 Hearing re: Application for Interim Professional
6 Compensation / Application of Browne Jacobson, LLP as
7 Special Counsel to the Trustee for Allowance of Interim
8 Compensation for Services Rendered and Reimbursement of
9 Actual and Necessary Expenses Incurred from August 1, 2013
10 through November 30, 2013 for Browne Jacobson, LLP, Special
11 Counsel, period: 8/1/2013 to 11/30/2013, fee: \$624,090.66,
12 expenses: \$32,822.16.

13
14 Hearing re: Application for Interim Professional
15 Compensation / Application of Eugene F. Collins as Special
16 Counsel to the Trustee for Allowance of Interim Compensation
17 for Services Rendered and Reimbursement of Actual and
18 Necessary Expenses Incurred from August 1, 2013 through
19 November 30, 2013 for Eugene F. Collins, Special Counsel,
20 period: 8/1/2013 to 11/30/2013, fee: \$3,075.55, expenses:
21 \$20.

22
23 Hearing re: Application for Interim Professional
24 Compensation / Application of Ritter & Ritter Advokatur as
25 Special Counsel to the Trustee for Allowance of Interim

1 Compensation for Services Rendered and Reimbursement of
2 Actual and Necessary Expenses Incurred from August 1, 2013
3 through November 30, 2013 for Ritter & Ritter Advokatur,
4 Special Counsel, period: 8/1/2013 to 11/30/2013, fee:
5 \$11,013.71, expenses: \$23.26.

6
7 Hearing re: Application for Interim Professional
8 Compensation / Application of Munari Giudici Maniglio
9 Panfili E Associate as Special Counsel to the Trustee for
10 Allowance of Interim Compensation for Services Rendered and
11 Reimbursement of Actual and Necessary Expenses Incurred from
12 August 1, 2013 through November 30, 2013 for Munari Giudici
13 Maniglio Panfili E Associati, Special Counsel, period:
14 8/1/2013 to 11/30/2013, fee: \$14,262.31, expenses: \$0.

15
16 Hearing re: Application for Interim Professional
17 Compensation / Application of Kelley, Wolter & Scott, P.A.
18 as Special Counsel to the Trustee for Allowance of Interim
19 Compensation for Services Rendered and Reimbursement of
20 Actual and Necessary Expenses Incurred from August 1, 2013
21 through November 30, 2013 for Kelley, Wolter & Scott, P.A.,
22 Special Counsel, period: 8/1/2013 to 11/30/2013, fee:
23 \$9,540.00, expenses: \$324.00.

24
25 Hearing re: Application for Interim Professional

1 Compensation / Application of Kugler Kandestein, LLP as
2 Special Counsel to the Trustee for Allowance of Interim
3 Compensation for Services Rendered and Reimbursement of
4 Actual and Necessary Expenses Incurred from August 1, 2013
5 through November 30, 2013 for Kugler Kandestein, LLP,
6 Special Counsel, period: 8/1/2013 to 11/30/2013, fee:
7 \$337.19, expenses: \$0.

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9 Hearing re: Motion to Approve Fourth Allocation of Property
10 to the Fund of Customer Property and Authorize Fourth
11 Interim Distribution to Customers.

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25 Transcribed by: Dawn South

1 A P P E A R A N C E S :

2 BAKER HOSTETLER

3 Attorneys for the Trustee and BLMIS

4 45 Rockefeller Plaza

5 New York, NY 10111

6

7 BY: DAVID J. SHEEHAN, ESQ.

8 IRVING H. PICARD, ESQ.

9 SEANNA R. BROWN, ESQ.

10

11 WINDELS MARX LANE & MITTENDORF, LLP

12 Counsel of Record for the Trustee and BLMIS

13 156 West 56th Street

14 New York, NY 10019

15

16 BY: ALAN NISSELSO, ESQ.

17 KIM M. LONGO, ESQ.

18

19 SECURITIES INVESTOR PROTECTION CORPORATION

20 Attorney for SIPC

21 805 15th St., N.W.

22 Suite 800

23 Washington, D.C. 20005-2215

24

25 BY: KEVIN H. BELL, ESQ.

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP
2 Attorney for Kingate Global Fund
3 51 Madison Avenue, 22nd Floor
4 New York, NY 10010
5

6 BY: ROBERT S. LOIGMAN, ESQ.
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1 P R O C E E D I N G S

2 THE CLERK: All rise.

3 THE COURT: Please be seated. Good morning.

4 UNIDENTIFIED SPEAKER: Good morning.

5 THE COURT: Madoff, the 10 o'clock calendar? I
6 think that's you Mr. Nisselson and we have a motion for
7 leave to file an amended complaint.

8 MR. SHEEHAN: Yes, Your Honor.

9 THE COURT: Okay. Step up, please.

10 MR. SHEEHAN: Good morning, Your Honor. David
11 Sheehan from Baker Hostetler for the trustee.

12 Your Honor has before you a motion for leave to
13 amend for the fourth time our complaint in the Kingate
14 matter for which no opposition has been filed.

15 We have filed our motion papers with Your Honor.
16 Unless you have any questions we'd move that an order be
17 entered.

18 THE COURT: Is there any objection to the motion?

19 MR. LOIGMAN: Your Honor, Robert Loigman of Quinn
20 Emanuel on behalf of the Kingate Funds. We have no
21 objection.

22 I do however just want to correct one short thing
23 that Mr. Sheehan said, I think they'll agree with, it's
24 actually the first amendment. I think the fourth amendment
25 referred to is the avoidance action.

1 MR. SHEEHAN: Oh.

2 THE COURT: This is the injunction complaint.
3 You're losing track of your complaints.

4 MR. SHEEHAN: Those things start to happen when
5 you're as old as I am, Your Honor.

6 THE COURT: Okay, I have no comment to that.

7 MR. SHEEHAN: Thank you, Your Honor.

8 THE COURT: Since there's no opposition and since
9 amendments are freely granted the motion is granted.

10 MR. SHEEHAN: Thank you, Your Honor.

11 THE COURT: You can submit an order.

12 MR. SHEEHAN: Thank you.

13 THE COURT: The Windels Marx fee application is on
14 now also.

15 MR. NISSELSON: As well as the other fee
16 applications.

17 THE COURT: The other ones are on at 10:30, I
18 don't know how that happened, but if you want to wait around
19 till 10:30 --

20 MR. NISSELSON: Yeah, I'll wait around --

21 THE COURT: All right.

22 MR. NISSELSON: -- unless Mr. Sheehan
23 (indiscernible - 00:02:37).

24 (Recess at 10:14 a.m.)

25 THE COURT: All right, we're up to Madoff. Good

1 timing.

2 (Pause)

3 MR. SHEEHAN: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MR. SHEEHAN: David Sheehan again for the trustee
6 and BLMIS.

7 This is the -- and I checked -- the fourteenth
8 return application for interim fee allowances by the trustee
9 and by his counsel that he's retained.

10 THE COURT: I had a case with 26, so you have a
11 long way to go.

12 MR. SHEEHAN: In any event we do have a long way
13 to go, but what I have done in the prior 13, Your Honor is,
14 is that we have very rarely had opposition to these
15 applications -- early on we did, but not in the last
16 probably 6 or 7 -- is that I still provided the Court with
17 an overview with regard to the trustee's efforts, those of
18 its other counsel, and the foreign counsel as well.

19 So if I would be permitted to do that this morning
20 I'd go ahead and do that.

21 THE COURT: Certainly.

22 MR. SHEEHAN: All right. First of all let me deal
23 with the application of the foreign counsel. I like to
24 start with those because I think it supplies the Court with
25 an overview of what's actually going on case wide.

1 As you can see from the applications we have many
2 foreign applications by counsel that the trustee has
3 retained over the course of the last five and a half years.
4 The trustee operates in 30 foreign jurisdictions, he does
5 not have causes of actions in all of those, but he is
6 operative in all in terms of pursuing the assets that we
7 believe are customer property and should be returned to the
8 estate.

9 And if I could quickly go through each of these
10 and give Your Honor an insight.

11 I will go first with Munari, which is a recent
12 firm that we've hired, only 38.9 hours. What they've been
13 assisting us is in regard to investigation and discovery
14 with regard to UniCredit. UniCredit is the parent of Bank
15 Austria, which is a principal defendant in the RICO case
16 that we've instituted against Sonya Cohen and numerous other
17 defendants. So they've been recently retained to assist us
18 with those endeavors, and as I said, their hours are not
19 significant.

20 Next one is Ritter & Ritter. Ritter & Ritter is
21 in Liechtenstein. Liechtenstein has been an active
22 participate in these litigations for some time. Indeed
23 there is an action there with regard to certain colleagues
24 of Ms. Cohen where we've actually frozen about \$2 million
25 worth of assets there. That freeze has continued not

1 withstanding the outcome of the lawsuit in London, which
2 I'll get to in a moment, but in any event we're active there
3 mostly with regard to discovery.

4 What we found as we uncovered the fraud of
5 Mr. Madoff and revealed it was that many, many of the
6 investors existed in Europe and in the Caribbean, that they
7 were principally brought to the exercise by way of these
8 feeder funds that we talk about quite often, and that that's
9 where we had to go to get the discovery.

10 Again, Ritter & Ritter's hours in this period are
11 only 22, again, principally engaged in assistance of
12 discovery efforts.

13 Mr. Collins is our counsel if Ireland. In Ireland
14 there was a major litigation involving the Thema (ph) Fund
15 and HSBC sued by their individual investors there. We
16 monitored that litigation having made a decision not to
17 participate based upon the advise of counsel, and so we did
18 not. We monitored it. It has settled for \$250 million.
19 That money is still being held in escrow pending resolution
20 of the trustee's claims against it, and Mr. Collins assisted
21 us with that effort.

22 Schiltz & Schiltz is in Luxembourg. Luxembourg is
23 also very active in terms of investigation, but also active
24 in the sense that there's active litigation there. Several
25 of the funds are based there, Luxof (ph) and a few others.

1 So as a result we have debtors that have sued there and
2 indeed Mr. Picard has also been sued there, and we've been
3 actively engaged in trying to resolve that litigation by way
4 of compromise if at all possible. And Schiltz & Schiltz
5 worked with us on all of those efforts in Luxemborg.

6 Higgs & Johnson is in the Cayman Islands. As I
7 indicated to Your Honor we have many feeder funds in this
8 case, all of them were developed offshore. They're either
9 in Cayman, BVI, or Bermuda. As a result at almost the
10 outset of the case we were compelled to go to each of those
11 jurisdictions, retain counsel.

12 As you might expect there weren't a lot of counsel
13 available to us because they'd already been retained, mostly
14 by the feeder funds who are prevalent in our case.

15 But nonetheless we have excellent counsel in Higgs
16 & Johnson who have been working with us in the Caymans and
17 principally in connection with the Kingate matter and others
18 that are related to the Cayman Islands, and we find -- not
19 Kingate, I apologize, Your Honor -- Fairfield, and as a
20 result we've been engaged in active participation with the
21 ongoing liquidations that have taken place there.

22 As Your Honor knows there's been a lot of activity
23 between the Fairfield liquidators and the people on the
24 other side.

25 THE COURT: I saw something on Law Through 60

1 today that --

2 MR. SHEEHAN: Yes.

3 THE COURT: -- the (indiscernible - 00:24:44)

4 counsel had --

5 MR. SHEEHAN: Yeah, they've got the --

6 THE COURT: -- ruled that they can't sue the
7 redeemers.

8 MR. SHEEHAN: Well the liquidators have had a
9 tough time of it, and the judge in the Caymans decided they
10 were not permitted to go forward, and they've lost that
11 appeal, so they -- we had settled, as Your Honor knows, a
12 listening time ago with them with the idea that we'd be able
13 to work together. It doesn't affect our cause of action,
14 but I think we'll be more or less on our own given what's
15 happened to the liquidators.

16 So that's what Higgs & Johnson has been assisting
17 in working with us on.

18 Sorkoer & Agmon is a firm in Tel Aviv. We are in
19 Israel because there was a customer of BLMIS called Magnify.
20 Magnify took out \$135 million in fictitious profits. What
21 they then did with it, they gave -- they turned over through
22 a series of individuals, Yar Greene (ph) being one of them,
23 and a fellow named Mr. Angoian (ph) who's since passed away,
24 but they created an enterprise called Yashia Horowitz (ph)
25 Foundation, which would sound like a child organization but

1 was not, it was more of a technology transfer company that
2 would then give those monies or vest them with various
3 universities and other endeavors to try to advance medical
4 and other scientific endeavors, and they would get in return
5 payments back from them.

6 It's been difficult, I must say, because what
7 happened was we were barely in the case when Yashia Horowitz
8 became aware of the fact that we were going pursue these
9 funds, and when they did they tried to liquidate Yashia
10 Horowitz and just destroy all the records.

11 We went to Israel, hired counsel, stopped that
12 from happening, the dissolution has been foregone, it's not
13 going to happen, and we're in the middle of getting a
14 receiver appointed with the assistance of the Israeli
15 courts, et cetera, so they will assist us in the discovery
16 there.

17 Discovery, as Your Honor knows, outside the United
18 States just does not follow the same routine that we have.
19 It's not as easy to just get discovery in Israel or quite
20 frankly most of our foreign jurisdictions, so we're working
21 through the receivership and the offices of the State of
22 Israel to assist us in that endeavor and Soroker-Agmon works
23 with us in those efforts.

24 Graf & Pitkowitz. Graf Pitkowitz is in Austria.
25 Austria is a major forum for us in terms of discovery.

1 There have been ongoing criminal investigations by
2 the Austrian authorities almost from the outset of this case
3 focusing principally on Sonya Cohen and other individuals as
4 well as Bank of Medici, which she created, as a vehicle to
5 bring monies to Madoff, and which was partially owned by
6 bank of Austria, which at the time was the state bank of
7 Austria.

8 Needless to say this has been an uphill battle.
9 What we have been able to do though is work cooperatively
10 with the Austrian prosecutors.

11 Unlike the United States we can become what they
12 call a participant in the proceedings because Mr. Picard
13 stands in the shoes, unlike how we approach it here, in
14 Kaplan (ph), he stands in the shoes of all those customers
15 and he can represent them as a victim. So he's able to
16 participate.

17 What we've been doing is assisting the prosecutor
18 by giving them documents and they in turn allow us to get
19 their documents and in turn when they take the depositions
20 -- they don't call them that -- they call them
21 confrontations -- but when they do confrontations of
22 witnesses we are allowed to sit in, propose -- not question
23 -- but propose questions to the prosecutor. It's been of
24 immense assistance to us in terms of going forward and
25 developing the facts in this case.

1 And Graf & Pitkowitz, as you can see, has
2 substantial time, 744 hours, engaged in all those endeavors.

3 BVI, SCA Creque. BVI is very important us because
4 it is where Kingate was incorporated. I made the mistake
5 earlier of saying the Caymans. But in any event Kingate as
6 you know is a very active defendant, we're actively
7 litigating with those.

8 There is \$300 million sitting in an account in
9 Cayman, it's the subject as Your Honor knows of an
10 application before you. There are additional assets that
11 we're aware of in Panama, Monaco, and Nigeria, none of those
12 are going to be easy forums within which to obtain those,
13 but it's why we're pursuing this as vigorously as we are, is
14 that there are substantial assets to be pursued and we think
15 we have a very strong case, obviously not going to argue it
16 here this morning.

17 What Graf & Pitkowitz have been doing -- or I'm
18 sorry -- what SCA Creque has been doing is assisting us when
19 there are court hearings in BVI. We really can't
20 participate, it's a very interesting phenomenon that occurs.
21 The British system has much more of a closed access to their
22 records and discovery, whereas here we have more or less an
23 open book, so to go down there we have to have someone go
24 monitor the proceedings and hopefully strike a relationship
25 with some of the people participating and then we get an

1 inside into actually what is happening, but we can't
2 actually get the court records, they're just not available
3 to us. So Creque assists us in those.

4 There's a good deal of activity, because when the
5 liquidators have to operate here in the United States as
6 they do they need to sanction, as they call it, sanction
7 meaning their authority, to go forward and to do that, so
8 they seek that authorities, for example, in connection with
9 what we're currently talking about with them on the
10 injunction.

11 In any event that's what SCA Creque does.

12 Then we have Williams, Barristers in Bermuda.
13 Bermuda is also interestingly enough both a Fairfield and a
14 Kingate jurisdiction.

15 The reason is, is that many of these enterprises,
16 Kingate in particular, created Kingate Management Ltd., it
17 was a separate entity, separate from the funds, with the
18 Sureti and Grosso (ph) who were the principals who owned
19 Kingate, created it so they should charge fees for
20 administering the two funds.

21 Our allegations are they did nothing, they never
22 did any evaluation of the assets, no evaluation of
23 Mr. Madoff or anything, but they just charged a substantial
24 fee to the tune of over \$300 million.

25 So Kingate Management Ltd. as you might suspect,

1 Your Honor, has an official receiver appointed by the courts
2 in Bermuda. We have a protective action there because there
3 is indeed \$100 million sitting in a bank account in Bermuda,
4 some of that has been diminished by the liquidator who's has
5 fees awarded, probably down to about 80 million now. In any
6 event we obviously monitor that.

7 And also Kingate liquidators have sued Kingate
8 Management ltd. in Bermuda. Again, our only way of keeping
9 track of that is having someone in the court observing and
10 working cooperatively with the people on hand, and that's
11 what Williams, Barristers does for us there.

12 Taylor Wessing. Taylor Wessing is in England. As
13 Your Honor will recall Mr. Madoff created an enterprise
14 called MSIL, Madoff Securities International Ltd.

15 MSIL was a fraudulent instrumentality as we have
16 alleged and which we believe to be the case. It was
17 essentially engaged in proprietary trading for Mr. Madoff,
18 but he utilized it as a vehicle by which to round trip funds
19 back through and then utilize it. I won't get into all the
20 gory details here this morning, but he was utilizing it to
21 round trip monies back into the Bank of New York account
22 which was the marketing platform and then they would get
23 charged for expenses from IA, and that's how he supported
24 the IA operation. So that's only one limited use of that.

25 He also told many people that he utilized that to

1 engage in after-marketing trading and that's how he was able
2 to avoid the exchange volatility because he was doing what
3 he called dark pools of liquidity, which actually do exist
4 of course, but not in the volume that he suggested in terms
5 of equities being traded between banks from private
6 reserves.

7 In any event at the end of the day MSIL we
8 instituted litigation against them in a very narrow sense.
9 We didn't want to and we've tried not to, and I should have
10 said this at the outset, we are not interested really in
11 trying any of our cases in foreign jurisdictions, we are
12 trying to try all of them here in the United States before
13 this Court, but what we did is we filed protective actions
14 recognizing that personal jurisdiction is going to be an
15 issue, we also have still pending before Judge Rakoff, it's
16 been there since October of 2012, the Morrison application
17 under a motion to withdraw the reference, so that also would
18 have a dramatic impact if it were adverse to the trustee.

19 So needless to say we want to be in a position
20 that we can move forward and we filed protective actions in
21 virtually all of these jurisdictions.

22 What we did in England though however was we did
23 not do that. We filed a very limited and targeted action
24 directed at Sonya Cohen who had been paid we thought
25 unauthorized fees and that the directors had allowed that to

1 happen because she was supposedly providing them with
2 research. You know, what we established was that the
3 research was indeed plagiarized and the English court found
4 that it was plagiarized. It somehow found that it was still
5 value, I'm still mystified by the opinion by Judge
6 Popplewell in that particular case, but the short version of
7 that is that we lost that case, it did not go well for us.

8 It has very limited impact, it's not been raised
9 by any of our adversaries in any of our litigations here
10 because it was such a narrow and targeted and focused piece
11 of litigation just on those very few transactions. And in
12 any event without going into greater detail on that Taylor
13 Wessing worked very, very hard on the case. It was a great
14 deal of effort to put it all together.

15 As Your Honor probably knows from the English
16 system you have to put together all of your evidence and put
17 it in, you have to have skeletal briefs, you basically
18 submit the case almost in advance, and it's more or less as
19 sometimes we conduct preliminary injunction hearings,
20 there's cross-examination, there isn't direct examination.
21 So it -- but the trial nonetheless still took six weeks.

22 Most of the reporting period that we're dealing
23 with here Taylor Wessing was actively engaged preparing for
24 and try thing case because it took place between June and
25 July.

1 Notwithstanding the outcome we do believe Taylor
2 Wessing did a very, very fine job, worked very, very hard
3 for us, and we totally support their application here this
4 morning as does SIPC.

5 Next we have Browne Jacobson. That's a second
6 firm that we have in the United Kingdom. We have them for
7 several reasons. First and foremost of course they're
8 conflict counsel.

9 Taylor Wessing is a major international law firm,
10 they have engaged in many, many, activities for a variety of
11 different clients, some of whom we've sued, so they can't
12 represent us in all the litigations that we have,
13 principally involving banks.

14 Browne Jacobson is a firm that we, meaning Baker,
15 has had a relationship for any number of years, a very
16 talented law firm principally located outside of London. In
17 any event they have worked with us not only in assisting us
18 on some of the extraneous efforts with regard to the MSIL
19 litigation in terms of providing overview of certain
20 bankruptcy issues, et cetera, but principally what they're
21 working with us on is two things. One is Pisquia (ph),
22 which I'll get to in a minute, which is litigation that's
23 very active in Gibraltar, has been around since almost the
24 inception of the case, and they act as our barristers there.

25 We do have solicitors as Your Honor knows with the

1 English system, we have two law firms in effect. So we have
2 the barristers at Browne Jacobson, the solicitors which I'll
3 get to in a moment, live in Gibraltar, and our solicitors
4 have been very active there, and I'll get in more detail
5 when I get to the Gibraltar application itself.

6 In addition to that, you know, there's also the
7 appellate process that we engaged in that they also assisted
8 us in.

9 Your Honor is probably familiar under, you know,
10 the rubric of Chapter 15 and universalism, there was this
11 Rubin decision that was decided by the courts in England
12 about two years ago, maybe longer, which we actively
13 participated in for some time and were permitted to file an
14 amicus.

15 What Rubin held was is that a default judgment
16 here in the United States could be -- I'm simplifying it --
17 both could be enforced in the United Kingdom, which would be
18 a tremendous boom obviously to us since many of the
19 defendants have chosen to ignore us. Well -- and we do
20 already have default judgments in, for example, the Veskia
21 (ph) case itself.

22 In any event on appeal we lost, it didn't turn out
23 as well as we would have liked and it also, you know,
24 brought into question --

25 THE COURT: Was that the Adelpia Lyondell

1 adversary proceeding? It was the Judge Gerber --

2 MR. SHEEHAN: Yes.

3 THE COURT: -- judgment wasn't it?

4 MR. SHEEHAN: Yes, it was.

5 There's -- but there's a case called Cambridge Gas
6 which was the predecessor to that which had been called into
7 question by the Rubin appellate decision, but thereafter --
8 and I'll drift into a little bit into Veskia -- needless to
9 say our adversaries of Veskia jumped on that opportunity in
10 Arpia (ph) that we could not bring this cause of action
11 because we had filed to enforce our default that we'd
12 achieved here against them, and we had, as I said filed a
13 protective action there as well.

14 So we not only filed to enforce our default, but
15 filed an action under the law of Gibraltar and their
16 insolvency statutes and the courts upheld our ability to do
17 that. They weren't too thrilled with our default but they
18 were okay with our ability to proceed under their -- and
19 both of those are under appeal right now, we're trying to
20 still suggest that Cambridge Gas has vitality and there's
21 still reasons why it should go forward here and it's
22 different than Rubin, but you know, that's obviously
23 somewhat difficult. But the other one we're pretty
24 comfortable with.

25 And needless to say Browne Jacobson was very

1 instrumental in structuring all of our arguments there, they
2 handled the skeletal briefs, they're the ones that argued,
3 et cetera.

4 But on the ground there, and I'm going to just
5 jump to them, we have the firm which Keith Asaparti (ph)
6 represents, and Keith Asaparti is in Gibraltar, he has
7 represented us for -- since the very beginning of the case,
8 in fact he switched firms and we switched with him because
9 he's that good. He was the former attorney general of
10 Gibraltar or what the equivalent of the attorney general
11 was.

12 He gives us access to the courts and represents us
13 there as a solicitor and is highly regarded and has been a
14 tremendous assistance in terms of advancing our causes of
15 action. As I say, there are several of them there.

16 And one highlight that's not in the application
17 here today but which I always like to refer to exists, is
18 that it was a benefit of Rubin, we as I said have obtained
19 judgments. One of the defendants was Zeus (ph) called --
20 one of the funds. And Zeus we had a default against. And
21 after Rubin they decided they'd really rather litigate, and
22 that case is going to be tried here in what's deposited with
23 this court is \$61 million. We're pursuing approximately
24 150-, but 61- is already here that we're fighting over with
25 them and at some point when we get a decision on Morrison

1 and we can move on these other cases -- everyone has joined
2 in Morrison and it's got a foreign basis -- so until that
3 gets resolved we're kind of hamstrung on being able to move
4 a lot of the feeder funds cases themselves.

5 That constitutes my overview at this point this
6 morning, Your Honor. And what I'd like to do now is to just
7 talk a little bit about what Baker has been doing and I
8 usually comment on Mr. Nisselson and the Young firm as well.

9 As Your Honor knows there's many elements to the
10 case, and let me just break them down into four things that
11 are principally the categories that we operate in.

12 One is the customer claims. Something we don't
13 talk a lot about, it's in front of Your Honor in the form of
14 the time-base -- not time-based damages -- the interaccount
15 transfer motion. But as I've always said from the very
16 beginning this being a Ponzi scheme it's two sides of the
17 same coin when you talk about customer claims.

18 When you're talking about claims you're also
19 talking about adversary proceedings, because on the other
20 side of it the denied claim is a net winner who we're trying
21 to retrieve money from.

22 So as we calculate those net, you know, equity
23 results we're also at the same time calculating the outcome.

24 Well that resulted in another MTWR in front of
25 Judge Rakoff involving antecedent debt, which Your Honor I

1 know is also familiar with.

2 So when the motions to withdraw the reference
3 started about a year and a half ago basically virtually all
4 the litigation got put on hold until such time as we could
5 resolve fundamental bankruptcy issues. The antecedent debt,
6 value, things of that nature, even from my perspective 546
7 should have been decided by the Bankruptcy Court, but I
8 didn't win that one.

9 In any event the point is, is that those are
10 almost all now resolved, and most of that started to happen
11 during the reporting period that we have before Your Honor,
12 and it influences what we were doing at the time.

13 So we at that point had over 800, as Your Honor
14 knows, what we call good faith causes of actions, meaning
15 that there's no intent at issue here, we're not suggesting
16 that, we're simply saying it's fictitious profits and at
17 least within the two-year period under current law from
18 Judge Rakoff we should at least be able to obtain that, not
19 that we're foregoing the six year until the circuit rules.

20 In any event we started getting all of those up.
21 Your Honor has actually been actively engaged in that, you
22 know, but all of that ground work that we put together to
23 triage those cases into two year and hybrids and six year
24 all was taking place during the reporting period. At the
25 same time we were also looking at the over 2000 customer

1 objections we had.

2 As Your Honor knows we've had a series of
3 objections. The first and most important was our net equity
4 calculation which took some time to resolve. It cut across
5 the entire spectrum of all of our customer claims, and what
6 we said in all of our customer claim determinations was if
7 in fact we lost we'd redetermine every claim. So we
8 preserved the objection for everyone. Until that was
9 resolved getting to the one offs or even the ones where
10 there's 2- or 300 didn't make much sense.

11 So we didn't move on any of those because it would
12 just -- if in fact we lost and it was the last day most of
13 those other objections would have been wiped away.

14 So in any event the next big one was customers and
15 who's a customer and who isn't and the -- you know, people
16 that invested as we call them indirect investors who
17 invested in the feeder funds and we treated the fund as the
18 customer. Again the Second Circuit and this Court agreed
19 with us and that resolved many, many of the customer claim
20 objections itself.

21 We are now in the phase, as Your Honor knows, of
22 trying to deal with the rest of those objections. The
23 largest ones first such as interaccount transfers, which
24 involves over 400, that's an ongoing effort involving many
25 of the attorneys at a firm, and they've worked

1 collaboratively obviously with the good faith side of that
2 because there's two sides to that at all time, because many
3 of the people that are good faith defendants are also people
4 who have objected to our determination, so we have to
5 cooperate -- collaborate on that.

6 Good faith I'm not going to spend a lot of time
7 on, Your Honor has intimate familiarity with it, you're
8 working with it every day, I think we will continue to work
9 with it for quite some time.

10 In addition to the good faith -- and there are a
11 lot of cases, there are a lot of people involved.

12 Just to give Your Honor a sense of the structure
13 when the case came to us, you can see it from the
14 application we have many, many people working on it and the
15 reason is not just the sheer volume of it but the
16 adversaries. The adversaries are very good, very creative,
17 and they're very active, and we are constantly stretched and
18 tested by them all the time, even in the good faith cases
19 which seem relatively straight forward and Your Honor is
20 seeing when speaking about just in the motions that you're
21 receiving to date.

22 But the bottom line is, is that what we've done is
23 we've incorporated groups of people from our Orlando,
24 Houston, Denver, and LA offices, mostly associates, try to
25 work at a lower rate, SIPC is very careful to monitor our

1 rate structure, our average hourly rate is under \$400 an
2 hour because of that. So as a result we utilize those
3 people to really deal with the good faith.

4 Principally the next category would be the feeder
5 fund cases, again, pretty much on hold, but as Your Honor
6 also knows Judge Rakoff found that somehow the SIPA statute
7 created a different standard for us, that it wasn't inquiry
8 notice, it's actual knowledge, and he then -- and analyzed
9 the Komed (ph) case and came to the conclusion we'd met that
10 standard at least in that particular case. So that's sort
11 of become a benchmark.

12 What we've done since then, even though that
13 decision is a decision on actual knowledge is still not
14 resolved, that's another one that we're waiting for from
15 judge Rakoff, we have assumed --

16 THE COURT: What is he supposed to decide?

17 MR. SHEEHAN: Well --

18 THE COURT: I thought he had decided that issue.

19 MR. SHEEHAN: -- what he hasn't decided is whether
20 the standard for approving good faith in a fraudulent
21 conveyance action. It's been withdrawn. What they've
22 argued is --

23 THE COURT: In connection with a 548(c) defense?

24 MR. SHEEHAN: Yes. He still has that.

25 So in any event, again, I thought that was a

1 bankruptcy issue, but you know what can I say.

2 So in any event at the end of the day we -- we are
3 waiting for those, and in the meantime we decided, which
4 happened during this reporting period, that you know, the
5 likelihood of him having a different standard than the one
6 he enunciated in deciding 546(e) in terms of actual
7 knowledge and utilizing the standard there, that's where
8 that emanates from, because we took the position that if you
9 actually knew there was no trading how could you get a safe
10 harbor, he agreed with that, but he agreed it was a very
11 high standard to prove that defense or prove that they
12 shouldn't have the defense.

13 In any event we have now been during the reporting
14 period and continuing through today amending the complaints.
15 One of the things I haven't mentioned is that we have an
16 enormous database. We have 28 million documents that are
17 active that we search all the time. In addition to that
18 that's out database that we've created from the records
19 preserved by Mr. Madoff over four decades, and we've
20 eliminated terabytes of data, we just don't even deal with
21 it because we can't possibly go through all of it. It gets
22 duplicative, it's every Wall Street Journal known to man he
23 seems to have kept because he would use those to go back --
24 you know, three days later he'd create statements out of
25 those Wall Street Journals.

1 In any event the bottom line the, is that we also
2 have five million documents that we've gotten and it keeps
3 growing from third parties. We've served over almost 500
4 subpoenas on third parties to obtain documents in connection
5 with this case, that's another large database that we
6 manage.

7 What we've been doing is doing a deep dive into
8 that database in light of the findings by Judge Rakoff and
9 hopefully anticipating, and while you're seeing some
10 amendments to the complaint you actually have a challenge
11 which will go shortly in the Berkin (ph) case as to whether
12 or not we've met that standard, and obviously we're going to
13 argue that we did.

14 But the bottom line is that's what a lot of the
15 work has been doing over the last couple of months or at
16 least during the reporting period, as well as Your Honor
17 also knows there's active litigation. We have motion
18 practice that occurs in these cases irrespective of whether
19 they've been withdrawn or not we still have those. Judge
20 Rakoff never shut down discovery, what we find though is all
21 of our adversaries in those cases say, well, you know, if
22 judge -- if the judge decides Morrison against you why are
23 we wasting time with discovery? So we're again sort of at a
24 stalemate there.

25 The last group of cases I combine them because

1 they're somewhat similar. Our subsequent transferee cases,
2 which we have many of those and in addition what we call the
3 leverage cases.

4 As Your Honor saw in connection with the 9019 for
5 JPMorgan Chase they engaged in structured products. What
6 they did is they went out to their high net worth
7 individuals and they had them invest in Madoff through
8 Fairfield in that particular case by packaging sort of a
9 three for one, you know, swap transaction and then investing
10 with Madoff because they saw it as a positive, you know,
11 virtually guaranteed return -- and I won't go into all the
12 details of why we say they should have known better -- but
13 the point is, is at the end of the day they weren't the only
14 ones that did that. There's about ten banks, I won't
15 remember all their names (indiscernible - 00:48:56) City and
16 a whole bunch of others that did this, that actually had
17 structured products that were invested in Madoff.

18 It's like I've always said, Bernie Madoff became
19 part of the financial fabric of Wall Street. People want to
20 say he's a one off but he's not, he's actually as much a
21 part of it as any other credit default swap, as much as AIG
22 was, Bernie Madoff was too because of all of these
23 transactions that took place.

24 These are very complicated transactions. We have
25 -- you know, we're the adversaries, the major named firms in

1 the city are all representing those banks as Wachtel (ph)
2 represented JPMorgan Chase. They are actively being pursued
3 right now but we're limited again in terms of where we can
4 go because we don't have the good faith standard and we're
5 somewhat slowed down. But those cases are active, but
6 they're all subsequent cases because they involve money
7 going into Fairfield and then coming out and getting paid to
8 JPMorgan and then paying them over to their clients.

9 But we have any number of subsequence emanating
10 out of the funds, whether it be Fairfield or any of the
11 others because they weren't -- banks weren't the only ones
12 utilizing them as an investment vehicle, Mr. Madoff was seen
13 as a very fine vehicle by which to invest so they did that.
14 So again, all of those cases are active all at the same
15 time.

16 What I've given Your Honor is a broad overview of
17 the work that the firm does during each of these reporting
18 periods, all at various stages, our submission of course
19 gives it to you in detail.

20 (Indiscernible - 00:50:27) we were -- and it's
21 worth I think informing Your Honor as to how this occurred
22 -- but early on as you may recall there was an involuntary
23 filed against Mr. Madoff at which point Mr. Niesselson was
24 appointed as -- by the U.S. Trustee as the trustee. The
25 very next day the U.S. Attorney forfeited \$170 billion of

1 Mr. Madoff and his wife thereby rendering the estate at
2 zero. Right. Nonetheless we thought and we still believe
3 that working with Mr. Niesselson as the Chapter 7 Trustee
4 and continuing that, and we did this certainly in
5 consultation at that time with Judge Lifland, and so he has
6 continued as that.

7 At the same time, given the fact that he has
8 knowledge that he has of the case, we have utilized the
9 Windels Marx firm as a conflicts firm, that's true, and there
10 are many instances where Baker has conflicts and we turn it
11 over to him. But because of the quality of the work and the
12 close working relationship we have with them they handle
13 many cases because of the sheer volume that are not
14 conflicts but that are given -- are turned over to Alan and
15 to his team -- and Kim Longo is here today as well -- who do
16 a superb job on all of these cases, and we -- you know,
17 without reservation support their efforts.

18 Windels Marx however has conflicts, so that's why
19 you have Conaway as in the case in a much more limited
20 capacity, but when they have conflicts -- if we have a
21 conflict we look to Young, Conaway who in the work they have
22 done have done a really very fine job.

23 So that in summary, Your Honor, is the state of
24 affairs with regard to the fourteenth interim fee
25 applications for Baker, their retained counsel, and I would

1 at this point turn it over to Mr. Bell who I think wants to
2 be heard --

3 THE COURT: Sure.

4 MR. SHEEHAN: -- by the --

5 THE COURT: Thank you.

6 MR. SHEEHAN: -- for SIPC.

7 THE COURT: Thank you very much.

8 MR. BELL: Good morning, Your Honor.

9 THE COURT: Good morning.

10 MR. BELL: Kevin bell on behalf of the Securities
11 Investor Protection Corporation.

12 Today is day 1,952 in the Madoff liquidation
13 proceeding.

14 THE COURT: Who's counting?

15 UNIDENTIFIED SPEAKER: He is.

16 MR. BELL: The fee period ending in November 30th
17 was the 1,854th day, the fourteenth fee application involves
18 122 days, and we are waiting for Judge Rakoff for 1,560 days
19 on the three matters he has under advisement.

20 THE COURT: You'll have to take that up with him.

21 (Laughter)

22 MR. BELL: We will. The Securities Investor
23 Protection Act, particularly Section 15 United States Code
24 78EEE(b)(5) addresses compensation in a SIPC liquidation
25 proceeding, it governs that, that's part of the statute, was

1 amended by the federal law enacted on May 25th, 1978, which
2 amended the Securities Investor Protection Act which had
3 been enacted on December 30th, 1970.

4 Of particular interest to the Court and to SIPC
5 and to the public is Section 78EEE(b)(5)(c), and the
6 criteria that are there. And I know Your Honor has had
7 other SIPA liquidation proceedings, but I just want to do as
8 I have done in the previous 13 fee applications when we got
9 up here, because SIPC has a responsibility, has great
10 sensitivity to this unique congressional enactment that was
11 put in here in the amendment in 1978 to address what we do
12 in reviewing the fee applications so we have a clear record
13 and the public understands that SIPC takes this
14 responsibility very seriously.

15 Each and every fee application that is submitted
16 to this Court has been previously reviewed by SIPC. And
17 when I say reviewed I mean each page and each entry, and if
18 there are matters that are questions Mr. Sheehan and
19 Mr. Nisselson and his team get what I call SIPC comments not
20 only from me who is the primary lawyer, but then when the
21 general counsel reviews my recommendations and she may have
22 other comments that we ask.

23 So you'll see reflected in paragraph 5 of the SIPC
24 recommendation on the fourteenth fee application in
25 paragraph 3 on the Windels' fee recommendation by SIPC

1 certain substantial reductions by the firms in light of the
2 SIPC comments.

3 Overall all the counsel that are subject to these
4 fee applications have agreed to a voluntary ten percent
5 discount across the board.

6 In addition to that there is the SIPC factor where
7 we look at it, raise questions, and there are other
8 reductions that occur.

9 Two that I would like to highlight in those
10 particular paragraphs is in the recommendation on Baker's
11 fourteenth application, the trustee and Baker's, the total
12 reduction is 16.6 percent on their standard ordinary rate,
13 which includes the 10 percent discount. On Windels it's at
14 paragraph 3 and there's a 17.27 percent, including the 10
15 percent voluntary discount.

16 As I noted because this is a case and if we look
17 at paragraph 231 of the fourteenth application the trustee
18 and Baker note that there's no reasonable expectation of
19 recoupment. SIPC monitors that, as this Court can be aware,
20 because of our substantial advances we have made not only
21 for satisfying customers of over \$812 million but the other
22 advances we have made pursuant to the directive of the
23 statute to provide for the payment of administrative
24 expenses which are approaching or exceeding three quarter of
25 a billion dollars.

1 So there is an act of oversight that SIPC has with
2 regard to this, it's in our annual report that we give to
3 the Securities and Exchange Commission which has an
4 oversight factor on SIPC, as well as the United States
5 Congress because there are committees in the House and the
6 Senate that are actively monitoring this case because this
7 case has caught the attention of the legislative body of
8 this country, and particularly some members of Congress that
9 have constituents who think that this should be done
10 differently.

11 The -- as I noted the SIPC review is very thorough
12 and we, Mr. Sheehan and I, have dialogue sometimes daily
13 regarding the invoices and what's being done, and
14 Mr. Sheehan's presentation today is not -- is not new news
15 because we're active and involved in the oversight of the
16 case.

17 So the critical thing here, Your Honor, and I've
18 said this on all 13 prior occasions, is that because there's
19 no reasonable expectation the statute pretty much says plain
20 language the Court shall award; however, I would note that
21 if we get to that nirvana state where SIPC gets back all its
22 recoupments and we are in a regular bankruptcy the statute
23 also provides that the Court should give weight to the SIPC
24 recommendation.

25 And that's the way I approach it, that's the way

1 my general counsel approaches it, it's the way the
2 corporation approaches it is that we are monitoring this so
3 if you had questions with regard to this and we were not in
4 that shall award state we would be prepared to answer
5 questions that the Court has, and you know, one of these
6 days when Mr. Sheehan and his team and Mr. Nisselson and his
7 team are successful and we reach payment of 100 percent of
8 customer claims and we get SIPC back, it's almost a billion
9 dollars of administrative advances in addition to the
10 \$812 million we advanced for customers and we start talking
11 about general estate back in the bankruptcy context, you
12 know, at that point in time I do believe, having lived this
13 statute for 40 years, that this Court is going to look on
14 this.

15 We have a reserve with Baker and the trustee of
16 something like \$30 million.

17 MR. SHEEHAN: Correct.

18 MR. BELL: Mr. Sheehan and I were discussing that
19 yesterday and I know there is a reserve not as high for
20 Mr. Nisselson's firm, as well as all the other firms,
21 because it's something that is there that as we get to the
22 final stages way down the road this Court I think has an
23 obligation to look at it and say the holdback should be paid
24 or should not be paid depending on the outcome of these
25 cases.

1 And so we monitor -- we monitor that, and you
2 know, while it is not here it was there on the thirteenth
3 after negotiation we recommended to the Court and the Court
4 approved a reduction of that holdback. That's not before
5 the Court now but has been before the Court on three or four
6 prior occasions, and is governed somewhat by the order of
7 the Court that is -- is noted in the trustee's application.

8 So I just wanted to present that to the Court and
9 ask the Court if it had any questions with regard to SIPC's
10 recommendations or SIPC's oversight of the case or the
11 applications, I --

12 THE COURT: I take it that SIPC recommends the
13 fees --

14 MR. BELL: SIPC recommends each and every one.
15 SIPC has filed six fee recommendations on the ninth
16 application of young, the seventh application of Good Field,
17 the second application of Kelley, all the applications of
18 the fifteen international special counsels, the thirteenth
19 application of Windels, and the fourteenth application of
20 trustee and counsel, it recommends it completely.

21 THE COURT: Thank you very much.

22 MR. BELL: Thank you, Your Honor.

23 THE COURT: Is there anyone else who wants to be
24 heard in connection with the fee applications? The record
25 should reflect there's no response.

1 I'll award the fees as requested subject to the
2 holdback and the expenses in full. I guess all subject to
3 review at the end of the case depending on how the case
4 turns out.

5 The trustee and his counsel are entitled to
6 reasonable compensation, SIPC has reviewed the applications,
7 and since SIPC has recommended the applications and has also
8 stated that it has no reasonable expectation at this time of
9 being -- of being -- of seeking recoupment I'm basically
10 bound by SIPC's recommendations.

11 So you can submit an order on that.

12 And then the only remaining thing is the
13 allocation motion.

14 MS. BROWN: Yes, Your Honor. Seanna Brown also on
15 behalf of the trustee.

16 This is also the return date of the trustee's
17 motion for a fourth allocation of property and a fourth
18 interim distribution to customers.

19 I want to note at the outset that there are also
20 no objections to this application.

21 The trustee has made three prior interim
22 distributions and the history is laid out in our papers so I
23 won't recount them here unless Your Honor has any questions.

24 THE COURT: No, I've reviewed the application.

25 MS. BROWN: Okay, great.

1 If I may briefly though just run through what the
2 trustee proposes to do here in the fourth distribution.

3 THE COURT: Go ahead.

4 MS. BROWN: The trustee intends to distribute
5 \$350 million which will go to approximately 1,000 accounts
6 with an average check of \$323,000. When you combine this
7 distribution with the prior distributions customers with
8 allowed claims will have received 46 percent of their losses
9 and the trustee will have fully satisfied over 1,100
10 accounts.

11 To date we have collected over \$9.8 billion, and
12 through our -- this distribution, our prior distributions,
13 and the SIPC advances, we will have returned to customers
14 almost \$6 billion.

15 As Your Honor knows from the papers and from the
16 statute however we can't distribute the full 9.8 billion at
17 this time because we must maintain reserves for disputed
18 amounts.

19 The two largest reserves that we have currently
20 are for the time-based damages appeal, which is currently
21 being briefed before the Second Circuit, and the reserves
22 that we maintain for those account holders that are in
23 litigation with the trustee.

24 Notwithstanding those reserves the trustee is
25 ready to make this fourth distribution which will return

1 significant amounts to customers particularly when it's
2 combined with the prior distributions and the amounts
3 advanced by SIPC.

4 We would respectfully ask that Your Honor approve
5 the allocation and authorize the trustee to make that
6 payment.

7 THE COURT: Is there anybody that wants to be
8 heard in connection with the application?

9 MR. BELL: Your Honor, SIPC is here in support and
10 it finds that this is a very important moment in this case
11 because the trustee will have distributed, if the Court
12 issues the order, 46.06 cents on the dollar together with
13 the approximate 14 cents that's on reserve for the two
14 matters, TBD, time-based damages, and the litigation dealing
15 with the customer account -- customers who have accounts
16 that are in litigation with the trustee.

17 THE COURT: Thank you.

18 All right, I'll grant the application. Certainly
19 it's in everybody's interest to get money to the victims as
20 quickly as possible. So you have submit an order on that.

21 MR. BELL: Yes, Your Honor.

22 THE COURT: Thank you.

23 (A chorus of thank you)

24 (Whereupon these proceedings were concluded at 11:18

25 AM)

I N D E X

RULINGS

Page Line

Motion for Leave to File an Amended
Complaint

14 9

All Fee Applications

47 1

Motion to Approve Fourth Allocation of
Property to the Fund of Customer Property and
Authorize Fourth Interim Distribution to
Customers

49 18

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C E R T I F I C A T I O N

I, Dawn South, certify that the foregoing transcript is a
true and accurate record of the proceedings.

AAERT Certified Electronic Transcriber CET**D-408

Veritext
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Date: February 18, 2014